

# ShawPittman LLP

A Limited Liability Partnership Including Professional Corporations

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June 1, 2004

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

Re: Ex Parte Submission  
WT Docket 03-66

Dear Ms. Dortch:

NY3G Partnership ("NY3G") is licensed to use the F Group channels in the New York City metro area. If the Commission adopts rules in the above-referenced proceeding that retain the long-standing policy of fully transitioning the F Group channels to commercial operations, NY3G is committed to use this spectrum and its own experience and resources to provide mobile and fixed broadband service to as many as 2 million customers in the country's largest market.

Until now, NY3G's plans have been blocked by the inefficiency and intransigence of the grandfathered ITFS licensee. The ITFS licensee is authorized to use both the B Group and F Group channels. Despite NY3G's best efforts to negotiate a more efficient arrangement, including paying all costs to move the ITFS licensee to a higher transmit location, the ITFS licensee persists in using the F Group channels as mere repeaters simulcasting the programming on the B Group channels, serving fewer than 100 receive sites from two low-elevation transmit sites with programming that could easily be delivered from a single higher elevation site using a single compressed channel or through alternative means that do not require the use of any spectrum.

Any new rules must prevent the perpetuation of this inefficiency and intransigence. NY3G therefore urges the Commission to adopt rules that resolve this impasse and put this spectrum to work for the benefit of the public. The options include the following:

- limit grandfathered ITFS licensees in major markets to no more than four channels (particularly if they are operating half their channels as repeaters);
- preclude an ITFS licensee from obtaining a PSA for its grandfathered ITFS operations (particularly one that has more than four channels);
- shift grandfathered ITFS licensees to unused I channels; or

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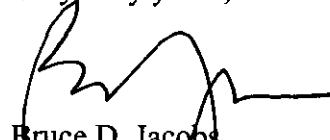
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- clarify that the ITFS licensee's F Group operations, frozen since 1983, will not be "unfrozen" to operate in the low-power mode contemplated by the NPRM.

Our research indicates that the situation we confront is unique. It is rare, if it exists at all, that the E and F Group channels have not successfully transitioned to commercial use and are being used to simulcast other channels. Moreover, a split-the-football approach will not work in New York City because it prevents NY3G from serving more than half the New York City metro area. (Indeed, because the ITFS licensee has two F Group transmit sites, the split-the-football approach is fundamentally unfair, if for no other reason than it may give the ITFS licensee more than half the geographic area.) The Commission is moving in the right direction with its proposals to reband the MMDS/ITFS spectrum. By refining those proposals to resolve the problems that have confronted NY3G in the New York City market, you will insure that real progress can be made in putting this spectrum to use.

Very truly yours,



Bruce D. Jacobs  
Tony Lin  
Counsel to NY3G Partnership

cc: (by electronic mail)

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